

1 BILL NO. S-82-10-22

2 SPECIAL ORDINANCE NO. S-200-82

3 AN ORDINANCE approving Water Contract
4 82-XP-3, Cook Road Industrial &
5 Research Center, with Earth Construction
6 and Engineering, Inc., in connection
7 with the Board of Public Works.

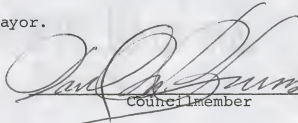
8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY
9 OF FORT WAYNE, INDIANA:

10 SECTION 1. That Water Contract 82-XP-3, Cook Road
11 Industrial & Research Center, dated September 8, 1982, between
12 the City of Fort Wayne, by and through its Mayor and the Board
13 of Public Works and Earth Construction and Engineering,
14 Inc., for:

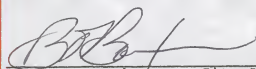
15 the installation of a water main on
16 Hatfield Road from Washington Center
17 Road northward to Ludwig Road;

18 involving a total cost of One Hundred Ten Thousand Four Hundred
19 Forty-Five and No/100 Dollars (\$110,445.00), all as more
20 particularly set forth in said contract which is on file with
21 the Office of the Board of Public Works and is by reference
22 incorporated herein, made a part hereof, and is hereby in all
23 things ratified, confirmed and approved. Two copies of said
24 contract are on file with the Office of the City Clerk and
25 made available for public inspection, according to law.

26 SECTION 2. That this Ordinance shall be in full
27 force and effect from and after its passage and any and all
28 necessary approval by the Mayor.

29 
30 Council Member

31 APPROVED AS TO FORM
32 AND LEGALITY

33 
34 Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Burns, seconded by Bradbury, and duly adopted, read the second time by title and referred to the Committee City of Fort Wayne (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, 19____, the _____ day of _____, at _____ o'clock _____ M., E.S.T.

DATE: 10-26-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns, seconded by Bradbury, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	<u>0</u>	_____	<u>1</u>	_____
<u>BRADBURY</u>	<u>X</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>X</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	_____	_____	_____	<u>X</u>	_____
<u>SCHMIDT</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>X</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>X</u>	_____	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 11-5-82

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (~~GENERAL~~) (~~ANNEXATION~~) (SPECIAL)

(APPROPRIATION) ORDINANCE (RESOLUTION) NO. 1-200-82
on the 9th day of November, 1982.

ATTEST:

(SEAL)

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of November, 1982, at the hour of 11:30 o'clock A. M., E.S.T.

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 11th day of November, 1982, at the hour of 9 o'clock A. M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-10-22

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN
ORDINANCE approving Water Contract 82-XP-3, Cook Road Industrial &
Research Center, with Earth Construction and Engineering, Inc.,
in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE go PASS.

PAUL M. BURNS - CHAIRMAN

MARK E. GIAQUINTA - VICE CHAIRMAN

JAMES S. STIER

JANET G. BRADBURY

ROY J. SCHOMBURG

11-5-82
CONCURRED IN
DATE CHARLES W. WESTERMAN, CITY CLERK

105-81-1
9/8/82

CONTRACT NO. 82-XP-3

BOARD ORDER NO. 28-82

WORK ORDER NO. 63530

THIS CONTRACT made and entered into in triplicate this 8 day of Sept, 1982, by and between Earth Construction and Engineering Inc., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER,

WITNESSETH, that the Contractor and the Owner, for the considerations hereinafter named, agrees as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the installation of:

4800± L.F. of 16" D.I. Water Main including all necessary fittings as follows. On Hatfield Road from Washington Center Road northward to Ludwig Road, thence eastward on Ludwig Road to Chalfant Road, thence northward on Chalfant Road a distance of 1500± feet.

all according to Fort Wayne Water Utility Drawing No. Y-10561, Sheets 1 thru 7, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the sum of \$110,445.00. In the event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by Owner upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Water Engineering Department less the aggregate of previous payments, will be paid by Owner to the Contractor.

WEBIDD

JOB E

remove 9/20/82

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Water Engineering Department to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Section 14 of the Compensation Act (I.C. 22-3-2-1).

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Sub-contractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder, at the time the Completion Affidavit is filed, shall also file a Manpower Utilization Report for this project.

ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Chapter 319 of the Acts of the General Assembly of the State of Indiana, of 1935.

ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Contract No. 82-XP-3.
- b. Instructions to Bidders for Contract No. 82-XP-3.
- c. Contractor's Proposal Dated August 11, 1982.
- d. Fort Wayne Water Utility Engineering Department Drawing No. Y-10561.
- e. Supplemental Specification for Contract No. 82-XP-3.
- f. Detailed Specifications and Conditions for the Installation of Transmission and Distribution Mains of the Fort Wayne Water Utility.
- g. Construction Standards and Water Main and Water Service Materials Standards of the Fort Wayne Water Utility, Engineering Department, latest revision, except as modified in the Supplemental Specifications.
- h. Workman's Compensation Act (I.C. 22-3-2-1).
- i. Non Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- j. Prevailing Wage Scale.
- k. Performance and Guaranty Bond.
- l. Minority/Female Employment Requirements Option

ARTICLE 9. GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the Contractor shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the water main by the City.

ARTICLE 10. INDEMNITY

Contractor shall furnish to Owner, within ten (10) days of the date hereof, a certificate from an insurer acceptable to Owner showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to Owner.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Utility of the Owner, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified in the within contract in 90 consecutive calendar days after having been ordered by the Owner to commence work under this contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

EARTH CONSTRUCTION AND ENGINEERING INC.

BY: Michael C. Everton
Michael C. Everton, Vice-President

BY: Gerald W. Osterman
Gerald W. Osterman, Secretary

CITY OF FORT WAYNE, INDIANA

BY: Win Moses, Jr.
Win Moses, Jr., Mayor

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

R. Snuffer

ASSOCIATE CITY ATTORNEY

BOARD OF PUBLIC WORKS

Stephen A. Bailey
Stephen A. Bailey, Chairman

Roberta Anderson Staten
Roberta Anderson Staten, Member

Betty R. Collins
Betty R. Collins, Member

Approved by the Common Council of the City of Fort Wayne on _____ day of _____, 19____.

Special Ordinance No. _____.

AMERICAN STATES INSURANCE COMPANY

INDIANAPOLIS, INDIANA

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That EARTH CONSTRUCTION & ENGINEERING, INC.

as Principal, hereinafter called Principal, and AMERICAN STATES INSURANCE COMPANY, a corporation of the state of Indiana, with its home office in the City of Indianapolis, Indiana, U.S.A., as Surety, hereinafter called Surety, are

held and firmly bound unto The Board of Public Works, City of Fort Wayne

as Obligor, hereinafter called Obligor, in the amount of One Hundred Ten Thousand Four Hundred

Forty-Five and NO/100 Dollars (\$ 110,445.00),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated September 8, 1982 entered into

a contract with Obligor for Contract #82-XP-3, BO #28-82, Work Order #63530 - 16"

Feeder Main to serve Cook Road Industrial and Research Center.

which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if Principal shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever Principal shall be, and be declared by Obligor to be in default under the contract, the Obligor having performed Obligor's obligations thereunder:

- (1) Surety may promptly remedy the default subject to the provisions of paragraph 3 herein, or;
- (2) Obligor after reasonable notice to Surety may, or Surety upon demand of Obligor may arrange for the performance of Principal's obligation under the contract subject to the provisions of paragraph 3 herein;
- (3) The balance of the contract price, as defined below, shall be credited against the reasonable cost of completing performance of the contract. If completed by the Obligor, and the reasonable cost exceeds the balance of the contract price, the Surety shall pay to the Obligor such excess, but in no event shall the aggregate liability of the Surety exceed the amount of this bond. If the Surety arranges completion or remedies the default, that portion of the balance of the contract price as may be required to complete the contract or remedy the default and to reimburse the Surety for its outlays shall be paid to the Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the contract. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Obligor to Principal under the contract and any amendments thereto, less the amounts heretofore properly paid by Obligor under the contract.

Any suit under this bond must be instituted before the expiration of two years from date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligor named herein or the heirs, executors, administrators or successors of the Obligor.

Signed and sealed this Eighth day of September 19 82

EARTH CONSTRUCTION & ENGINEERING, INC.

By Michael C. Eason (SEAL)
VICE-PRESIDENT Principal

AMERICAN STATES INSURANCE COMPANY
Surety

By Fred L. Tagtmeyer
Fred L. Tagtmeyer Attorney-in-Fact

AMERICAN STATES INSURANCE COMPANY

INDIANAPOLIS, INDIANA

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That EARTH CONSTRUCTION & ENGINEERING, INC.

as Principal, hereinafter called Principal, and AMERICAN STATES INSURANCE COMPANY, a corporation of the State of Indiana, with its home office in the City of Indianapolis, Indiana, U.S.A., as Surety, hereinafter called Surety, are

held and firmly bound unto The Board of Public Works, City of Fort Wayne

as Oblige, hereinafter called Oblige, for the use and benefit of claimants as hereinbelow defined, in the amount

of One Hundred Ten Thousand Four Hundred Forty-Five and 00/100 dollars (\$110,445.00), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated September 8, 1982

entered into a

contract with Oblige for Contract #82-XP-3, BO #28-82, Work Order #63530 - 16" Feeder

Main to serve Cook Road Industrial and Research Center

which contract is by reference made a part hereof, and is hereafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) A claimant is defined as one having a direct contract with the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the contract.
- (2) The above-named Principal and Surety hereby jointly and severally agree with the Oblige that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant in the name of the Oblige, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon, provided, however, that the Oblige shall not be liable for the payment of any costs or expenses of any such suit.
- (3) No suit or action shall be commenced hereunder by any claimant,
 - (a) Unless claimant shall have given written notice to any two of the following: The Principal, the Oblige, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Principal, Oblige or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - (b) After the expiration of one (1) year following the date on which Principal ceased work on said contract.
 - (c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
- (4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this Eighth day of September 19 82

EARTH CONSTRUCTION & ENGINEERING, INC.

By: Mahmud C. E. E. (SEAL)
VICE-PRESIDENT-Principal

AMERICAN STATES INSURANCE COMPANY
Surety

By: Fred L. Tagtmeyer
Fred L. Tagtmeyer Attorney-in-Fact

American States Insurance Company

INDIANAPOLIS, INDIANA

KNOW ALL MEN BY THESE PRESENTS, that American States Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, and having its principal office in the City of Indianapolis, Indiana, hath made, constituted and appointed, and does by

these presents make, constitute and appoint GERALD C. KRAMER, BERNARD M. NIEZER, LOUIS H. ANDREWS,

CURTIS C. HILL, GERALD C. KRAMER, JR., FRED L. TAGTMAYER AND WALTER E. MANSKE-----

(Jointly or Severally)

of Fort Wayne and State of Indiana
its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and

deliver any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings, provided,

however, that the penal sum of any one such instrument executed hereunder shall

not exceed TWO MILLION AND NO/100 (\$2,000,000.00) DOLLARS-----
and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Section 7.07 of the By-Laws of the American States Insurance Company, which reads as follows:

"The Chairman of the Board, the President or any Vice-President shall have power, by and with the concurrence with the Secretary or any Assistant Secretary of the Corporation, to appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact as the business of the Corporation may require or to authorize any one of such persons to execute, on behalf of the Corporation, any bonds, recognizances, stipulations and undertakings, whether by way of surety or otherwise"

IN WITNESS WHEREOF, American States Insurance Company has caused these presents to be signed by its Vice-President, attested by its

Assistant Secretary and its corporate seal to be hereto affixed this 29th day of January

A. D. 19 82

(SEAL)

ATTEST:

STATE OF INDIANA }
COUNTY OF MARION } SS:

Assistant Secretary

AMERICAN STATES INSURANCE COMPANY

By

Assistant Vice-President

On this 29th day of January, A. D. 19 82, before me personally came

Alanson T. Abel

, to me known, who being by me duly sworn, acknowledged the execution of the above instrument and did depose and say: that he is a Vice-President of American States Insurance Company; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said Corporation; and that he signed his name thereto under like authority. And said

Alanson T. Abel further said that he is acquainted with Thomas M. Ober and knows him to be the Assistant Secretary of said Corporation; and that he executed the above instrument.

MY COMMISSION EXPIRES

February 14, 1984

My Commission Expires

STATE OF INDIANA }
COUNTY OF MARION } SS:

Notary Public

I, Thomas M. Ober, the Assistant Secretary of AMERICAN STATES INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said AMERICAN STATES INSURANCE COMPANY, which is still in full force and effect.

This Certificate may be signed and sealed by facsimile under and by the authority of Section 8.03 of the By-Laws of AMERICAN STATES INSURANCE COMPANY which reads as follows:

"All policies and other instruments of insurance issued by the Corporation shall be signed on behalf of the Corporation by the president or a vice-president and the secretary or an assistant secretary, whose signatures, if the instrument is duly countersigned by an authorized representative of the Corporation, may be facsimiles. Such signatures and facsimiles thereof shall be authorized and binding upon the Corporation notwithstanding the fact that any such officer shall have ceased to be such officer at the time such policy or other instrument of insurance shall have been actually issued by the Corporation."

(In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 8th day of September

A. D. 19 82

(SEAL)

TITLE OF ORDINANCE Water Contract 82-XP-3, Cook Road Industrial & Research Center

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

1-82-10-22

SYNOPSIS OF ORDINANCE Contract between the City of Fort Wayne and Earth Construction

and Engineering, Inc. for the installation of a water main on Hatfield Road from

Washington Center Road northward to Ludwig Road.

Prior approval received 9/14/82

EFFECT OF PASSAGE Problems experienced by residents will be solved.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$110,445.00

ASSIGNED TO COMMITTEE